



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/0790

Re: Property at 1081 Sauchiehall Street, 3/1, Glasgow, G3 7UE (“the Property”)

Parties:

Ms Ohood Albalawi, 1/2 1 Clairmont Garden, 175 Elderslie Street, Glasgow, G3 7JR (“the Applicant”)

Westgate Estate Agents, , 49 Byres Road, Glasgow, G11 5RD (“the First Respondent”); Miss Jen Cassidy formerly of 50 Buchan Drive, Dunblane, FK15 9JR and now of Kilken Cottage, 21 Sauchenford, Plean FK7 8AP (“the Second Respondent”)

Tribunal Members:

John McHugh (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Second Respondent has failed to comply with her duty under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and should be ordered to pay the Applicant the sum of £500.

Background

The Applicant was the tenant and the Second Respondent the landlord under a private residential tenancy of the Property dated 1 February 2019.

The Applicant complains that the Second Respondent failed to place her deposit in an approved scheme in accordance with her obligations under Regulation 3 of the 2011 Regulations.

The Case Management Discussion

A Case Management Discussion ("CMD") took place by telephone conference on 14 August 2020. The Applicant was present and represented by Abeer Almutairi. The Second Respondent and Stephen McGlone of the First Respondent were present.

The parties agreed that the Applicant's deposit should have been placed in an approved scheme within 30 days of the tenancy commencing on 1 February 2019 but that the deposit was not in fact so placed until 30 January 2020.

The Second Respondent relied upon the First Respondent as her letting agent. The Second Respondent advises that she has no other let properties and has not been in a similar position as regards a deposit previously. Mr McGlone explained that there had been an oversight in the failure to lodge the deposit. The First Respondent had overlooked its normal procedures. This was the first time it had happened and arrangements had been put into place to avoid a repetition. As soon as the matter came to its attention, the First Respondent had placed the deposit into an approved scheme. Any award granted against the Second Respondent will, as a matter of agreement between the First Respondent and the Second Respondent, be paid by the First Respondent.

The Applicant considered that the deposit had only been placed in an approved scheme because she had raised the issue. She complained that Mr McGlone had telephoned her and had been aggressive concerning her complaint.

Findings in Fact

The Applicant was the tenant and the Second Respondent the landlord under a private residential tenancy dated 1 February 2019.

The First Respondent was the Second Respondent's letting agent.

The Applicant paid to the First Respondent a deposit of £1095 on 1 February 2020.

The deposit should have been placed in an approved scheme by 3 March 2019. It was not placed into a scheme until 30 January 2020.

Reasons for Decision

It is accepted by the Respondents that the Second Respondent is in breach of her duty under Regulation 3. Having established that there has been a breach of Regulation 3, the Tribunal is obliged in terms of Regulation 10 to make an order requiring the Second Respondent to make a payment to the Applicant. An aggravating factor is that the deposit remained unprotected for close to a year and that it was only placed in a scheme when the matter was raised by the Applicant. In the Second Respondent's favour is the fact that she had entrusted dealing with the deposit to a letting agent; that she has not previously failed to deal appropriately with

tenants' deposits; that the deposit was promptly placed in an approved scheme when the failure was pointed out and that the Applicant has suffered no actual detriment. The Tribunal regards this case as being at the less serious end of the scale and finds an award of £500 to be appropriate.

Decision

The Second Respondent should be ordered to pay the Applicant the sum of £500.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

**John McHugh
Legal Member/Chair**

**14 August 2020
Date**